

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1157

Reversed
Disqualification

PROCEDURAL HISTORY: On November 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 74519). Claimant filed a timely request for hearing. On December 13, 2018, ALJ Scott conducted a hearing, and on December 14, 2018 issued Order No. 18-UI-121319, reversing the Department's decision. On December 19, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bruce & Dana Wholesale Inc. employed claimant as a bookkeeper from August 20, 2018 until October 1, 2018. Before hire, claimant was assigned to work as a bookkeeper for the employer through a staffing agency.

(2) The employer expected that claimant would promptly enter information about all bank transfers and bank deposits made in QuickBooks, the accounting software in which the employer kept information about its cash account. The employer also expected that claimant would balance the employer's checkbooks for five accounts and reconcile QuickBooks with the checkbooks on a weekly basis. The employer wanted accurate and timely information about the cash balances in its bank accounts. The employer further expected claimant would reconcile the checkbook and cash account entries in QuickBooks to the bank statements that were received each month. Claimant understood the employer's expectations.

(3) On approximately five or six occasions before September 17, 2018, the employer's owner met with claimant to discuss how claimant was balancing the checkbooks and entering cash account information in QuickBooks. On those occasions, the owner told claimant that the employer wanted him to balance the checkbooks weekly and to enter all deposits and transfers into the bank account in QuickBooks as they were made. The owner thought claimant was not doing what she had asked of him, including balancing the checkbooks and making the entries in QuickBooks.

(4) On September 17, 2018, the owner, president and corporate secretary met with claimant to discuss how the employer wanted claimant to balance the checkbooks and keep cash information in

QuickBooks. In advance of the meeting, the owner asked claimant to prepare a list of what he thought his work responsibilities were. During the meeting, the employer representatives reviewed the list with claimant and clarified what they expected of him. They told claimant they wanted the checkbooks balanced weekly. They told claimant they wanted him to enter on a timely basis all deposits and transfers made into the bank accounts in QuickBooks. When claimant indicated to them that such information was contained in spreadsheets that he routinely prepared, they told claimant that, because it was the employer's practice to balance the checkbooks using QuickBooks and to reconcile the bank statements to the checkbooks and QuickBooks, they needed him to enter deposit and transfer information in QuickBooks, regardless of the spreadsheets. The employer representatives understood claimant to state that he would do so. When the owner asked claimant if he wanted the employer to prepare a list of what was expected of him, claimant said that he did not.

(5) After September 17, 2018, claimant did not balance the checkbooks on a weekly basis. Claimant also did not enter in QuickBooks on a timely basis the deposits and transfers into the bank accounts.

(6) On September 26, 2018, claimant completed a spreadsheet that showed every check, deposit and transfer for each of the employer's bank accounts from June 1, 2018 through approximately September 26, 2018, the date that the summary was completed. Daily balances for the cash accounts in QuickBooks could be derived from the summary. Claimant did not print the summary because no ink was available.

(7) On October 1, 2018, the employer discharged claimant for not balancing the checkbook as instructed and not entering deposit and transfer information in QuickBooks as instructed.

CONCLUSIONS AND REASONS: The employer discharged claimant for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) (January 11, 2018) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. The employer has the burden to show claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

In Order No. 18-UI-121319, the ALJ concluded that, although the employer discharged claimant, it did not do so for misconduct. The ALJ reasoned that, while the employer showed that claimant violated its standards of behavior, it failed to show "claimant's definite awareness of employer's expectations" and as a result "there was no possible way to establish claimant's willful or wanton defiance of those expectations." Order No. 18-UI-123129 at 3. We disagree.

There was no dispute that claimant was aware that the employer expected him to balance its checkbooks and that, because of the way the employer kept its books, it also expected him to reconcile the checkbooks with the entries that were made in QuickBooks for its cash accounts. Transcript at 28. While claimant denied that the employer ever informed him that it wanted its checkbooks balanced and entries reflecting cash deposit and transfers made in QuickBooks by Friday of each week, his testimony indicated that he understood that the employer wanted him to complete these tasks on at least a weekly basis to be timely. Transcript at 25, 26, 29. However, the record does not show that claimant balanced,

or attempted to balance the checkbooks or made the required entries in QuickBooks weekly from June 1, 2018 through approximately September 26, 2018. Had he done so, claimant logically would have pointed that out rather than describing a summary document that he prepared around September 26, purporting to show all checks written and deposits and transfers made between June 1 and approximately September 26, and suggesting that the information in it was an adequate substitute for having timely balanced the checkbook and made the QuickBooks entries. Transcript at 29. Notably, however, claimant did not challenge the testimony of the employer's witnesses that he was explicitly told that spreadsheets or other documents prepared outside of the checkbooks or QuickBooks did not satisfy the employer's needs, and that he needed to perform the balancing and make the cash account entries in the checkbooks and QuickBooks.

Claimant also contended that he could not balance the checkbooks because of errors in them that were attributable to the employer. Transcript at 26-27, 31. However, the validity of this contention is markedly undercut by the fact that he was able to prepare the September 26 summary document which supposedly encompassed accurate information relating to all checks, transfers and deposits for the period in which claimant was expected to balance the employer's checkbooks. Transcript at 29. On this record, the preponderance of the evidence shows claimant did not balance the employer's checkbooks and did not make the required cash account entries in QuickBooks on a timely basis from at least June 1 through approximately September 26, 2018, which included the period after the owner, president and secretary clarified the employer's expectations to claimant on September 17. By continuing to not do so after September 17, when he knew the employer expectations, claimant willfully violated the employer's standards.

Although claimant may have willfully violated the employer's standards, this violation will be excused from constituting misconduct if it was an isolated instance of poor judgment under OAR 471-030-0038(3)(b). To be excused as an isolated instance of poor judgment, the behavior of claimant that is at issue must have been, among other things, a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Here, claimant's failure to balance the checkbook and make the required entries in QuickBooks after September 17 and until he was discharged on October 1, 2018, encompassed two work weeks. Because claimant willfully disregarded the employer's standards on two consecutive occasions immediately after he was again informed of them, his behavior was not a single or infrequent act. As such, the behavior for which claimant was discharged may not be excused as an isolated instance of poor judgment.

Nor may claimant's willful behavior be excused as a good faith error under OAR 471-030-0038(3)(b). On this record, it is implausible that claimant thought after September 17, that the employer would condone his continued failure to balance the checkbook or make required entries in QuickBooks.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-121319 is set aside, as outlined above.

D. P. Hettle and S. Alba;
J. S. Cromwell, not participating.

DATE of Service: January 24, 2019

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية محكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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